IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6749 of 2007()

CRIME NO.209/07 OF ANCHAL POLICE STATION

: PETITIONER/ACCUSED NO.1 TO 3

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1. JAYA PRAKASH, AGED 48,
S/O.SRIDHARAN, PANAYANCHERRY, ANCHAL P.O.

2. ANEESH,S/O.JAYA PRAKASH,
PANAYANCHERRY, ANCHAL P.O.

3. AJAYAKUMAR, AGED 40, UDAYAVILASOM
VADAMON P.O,. THOYITHALA.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS:

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1. STATE OF KERALA ,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

2. SUB INSPECTOR OF POLICE
ANCHAL POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6749 of 2007

Dated this the 6th day of November, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 to 3. They face allegations under Sections 326 and 452 r/w 34 I.P.C. The alleged incident took place on 26.05.07. The injured/victim had gone to the hospital on that very day and had alleged to the doctor that he had suffered the injuries in an assault. No F.I.R appears to have been registered. But long later, the defacto complainant filed a private complaint on 19.06.07 and the said complaint was forwarded to the police under Section 156(3) Cr.P.C. Investigation is now complete. The learned Public Prosecutor submits that final reports have been filed before the courts concerned. As against the 2nd accused, as he happens to be a juvenile, proceedings are initiated before the Juvenile Justice Board, submits the learned Public Prosecutor .

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. It is prayed that anticipatory bail may be granted to the petitioners.

3. The application is opposed by the learned Public Prosecutor . The learned Public Prosecutor submits that there are no

circumstances whatsoever justifying the invocation of the discretion under Section 438 Cr.P.C.

4. I have considered all the relevant inputs. The final report having already been filed, it is for the petitioners to appear before the court/board concerned and then seek regular bail. I find absolutely no features in this case which can justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The mere fact that there was a delay in the complaint being filed before the Magistrate cannot lead the Court to any conclusion in the wake of the wound certificate which shows that the victim had gone to the doctor on the very same date and had raised the allegation that the fracture suffered by him was on account of an assault.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-